



University of Kentucky
UKnowledge

1970-1979

Briefs

6-18-1976

Larry Garr Bennett v. Commonwealth of Kentucky

Reply Brief (P) 1975-SC-0689

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Follow this and additional works at: https://uknowledge.uky.edu/ky_appeals_briefs70s

 Part of the [Courts Commons](#)

Repository Citation

1975-SC-0689, Reply Brief (P), "Larry Garr Bennett v. Commonwealth of Kentucky" (1976). 1970-1979. 106.
https://uknowledge.uky.edu/ky_appeals_briefs70s/106

This Brief is brought to you for free and open access by the Briefs at UKnowledge. It has been accepted for inclusion in 1970-1979 by an authorized administrator of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.



KYSC1975-SC-0689-02

{E1F72A86-DB92-4AF7-8F36-2398F0ED77F5}
{134928}{54-130227:145123}{061876}

REPLY BRIEF (P)

SUPREME COURT OF KENTUCKY

FILE NO. 75-689

LARRY GARR BENNETT

PETITIONER

V.

COMMONWEALTH OF KENTUCKY

RESPONDENT

APPELLEE'S RESPONSE TO
PETITION FOR REHEARING

ROBERT F. STEPHENS
ATTORNEY GENERAL

FILED

JUN 18 1976

MARTHA LAYNE COLLINS
CLERK
SUPREME COURT

ROBERT W. HENSLEY
ASSISTANT ATTORNEY GENERAL
CAPITOL
FRANKFORT, KENTUCKY 40601

LUCIEN L. KINSOLVING
COMMONWEALTH ATTORNEY
53rd JUDICIAL DISTRICT

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE:

I hereby certify that a copy of the foregoing Appellee's Response to Petition for Rehearing has been mailed to Hon. Harold Y. Saunders, Judge, Shelby Circuit Court, Shelby County Courthouse, Shelbyville, Kentucky 40065; Hon. Lucien L. Kinsolving, Commonwealth Attorney, 53rd Judicial District, County Courthouse, Shelbyville, Kentucky 40065; Hon. Neil S. Hackworth, Trial Counsel, P.O. Box 224, Shelbyville, Kentucky 40065; and Hon. Jack Emory Farley, Public Defender, 625 Leawood Drive, Frankfort, Kentucky 40601 this 18th day of June, 1976.

Robert W. Hensley
Assistant Attorney General

SUPREME COURT OF KENTUCKY

FILE NO. 75-689

LARRY GARR BENNETT

PETITIONER

V.

COMMONWEALTH OF KENTUCKY

RESPONDENT

APPELLEE'S RESPONSE TO
PETITION FOR REHEARING

* * * * *

MAY IT PLEASE THE COURT:

ARGUMENT

THE SUPREME COURT OF KENTUCKY DID NOT MISCONCEIVE THE FACTS IN THIS APPEAL AND THEREFORE THE APPLICABLE LAW ON JURY INSTRUCTIONS RELEVANT THERETO AND PROPERLY AFFIRMED THE ACTION OF THE TRIAL COURT IN REFUSING THE DEFENDANT'S PROFFERED JURY INSTRUCTION ON DEFENSE OF HOME.

The appellee directs this Court's attention to the fact that although the original appeal in this case presented two issues the appellant's Petition for Rehearing is based upon but one of those original two issues and that is whether or not the defendant was entitled to a jury instruction on defense of home.

The appellee contended in its appeal brief (see BRIEF FOR APPELLEE at p. 2 and 3-4) that the most pertinent passage of testimony on the issue of defendant's right to defense of home instruction appeared in the Transcript of Evidence (hereinafter cited as T.E.) p. 76. It was as follows:

Q. 45. Now, when Mr. Boothby [the decendent] hit you and threatened to take the car, what did you think at that time, what was going through your mind?

A. I figured he was going to try to take my money and possibly beat the hell out of me. I was scared.

Q. 46. How scared were you?

A. Real scared. I am scared of violence, I don't like violence. I have been beat up before and I'm just petrified of it.

Q. 47. When you picked up the gun, what was going through your mind at that time, when you picked up your brother's gun, what were you thinking about?

A. That when Mr. Boothby...when he would see the gun that he would go away and leave me alone.

The appellant in his Petition for Rehearing cites but one case, Sawyer v. Commonwealth, Ky., 13 S.W.2d 267 (1929), as establishing appellant Bennett's right to a defense of home instruction. But the appellee would move this Court to consider how different the facts in Sawyer are as compared to the facts in this case.

In Sawyer the opinion of the Kentucky Court of Appeals related (at p. 267-268):

In December following the abandonment of the preceding September [by decedent Riley of appellant's sister], Riley came to the home maintained by the appellant for his sister and himself and there flourished a revolver and threatened the lives of the appellant and his sister, tore up some of the household furniture, and was about to carry off the bedclothing and furnishings, when third parties approached, whereupon he desisted. On the day of the homicide even, the evidence for the commonwealth establishes that this man Riley, although warned to stay away from appellant's home, announced his purpose of going over there and entering despite the fact that he had been forbidden to do so. The evidence shows that about 1 o'clock in the afternoon on the day of his death Riley left a neighbor's house and walked along the road to the bottom of the steps leading up to appellant's home. The commonwealth's proof admits that the appellant again warned him once to come no further. The appellant's proof establishes that appellant warned him twice again not to come into the place. Appellant says that he was in the light of his former experiences fearful of what Riley would do if he got into the house. (Emphasis Appellee's).

But in the instant case it appeared from Mr. Bennett's testimony that he did not know the decedent very well and that the most time the two ever spent together was the time spent together on the day of the shooting. See T.E. at p. 66 and 67-71.

It is the position of the appellee, in view of appellant's testimony of fear for his personal safety, T.E. p. 76, that the more relevant case to this issue, and the one cited in appellee's brief at p. 4, is Combs v. Commonwealth, Ky., 306 S.W.2d 269 (1957), wherein the Kentucky Court of Appeals, though declining to decide whether it was necessary for other persons to be present in a home or whether a threat to damage the property in the home or house itself was necessary for an instruction on defense of the home, stated (at p. 271):

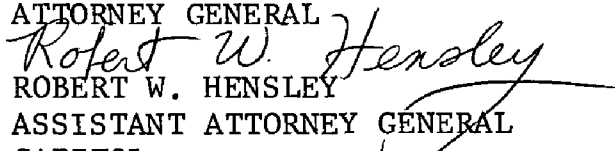
The foregoing testimony has been related in detail because of the alleged error of the trial court in failing to give an instruction on defense of the home, a contention relied upon by appellant for reversal of the judgment. However, it must be emphasized that the appellant, in his testimony, did not specifically assert any intention to defend his home; it was his own personal danger which motivated his action according to his plea of self-defense.

Also see Wolford v. Commonwealth, Ky., 186 S.W.2d 407 (1945).

CONCLUSION

WHEREFORE, based upon the foregoing, it is the position of the appellee that the appellant's Petition for Rehearing should be denied.

Respectfully submitted,

ROBERT F. STEPHENS
ATTORNEY GENERAL

ROBERT W. HENSLEY
ASSISTANT ATTORNEY GENERAL
CAPITOL
FRANKFORT, KENTUCKY 40601

LUCIEN L. KINSOLVING
COMMONWEALTH ATTORNEY
53rd JUDICIAL DISTRICT

COUNSEL FOR RESPONDENT